

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL L. DAYTON,

Plaintiff,

-against-

WESLEY GLEN FORT, ALBERT L. PROVOST, Individually,
and ALBERT L. PROVOST d/b/a JUGGIE'S CONCESSIONS,

Defendants.
-----X

NOTICE OF REMOVAL
07 CIV. 8643
07 CV
JUDGE CONNER
State Court Index No.:
2007-7091

NOTICE OF REMOVAL PURSUANT TO 28 USC §1441 et seq.

Defendants in the above-captioned proceeding WESLEY GLEN FORT, ALBERT L. PROVOST, Individually, and ALBERT L. PROVOST d/b/a JUGGIE'S CONCESSIONS, by and through their attorneys TARSHIS, CATANIA, LIBERTH, MAHON & MILLIGRAM, PLLC, hereby files this Notice of Removal in the foregoing case from the Supreme Court of the State of New York, County of Orange to this United States District Court for the Southern District of New York, and respectfully shows and petitions this Court as follows:

1. On or about the 23rd day of August, 2007 an action was commenced in the New York State Supreme Court, County of Orange under Index No. 2007/7091. Copies of the Summons and Complaint along with the affidavits of service filed in the State Court action are annexed hereto as Exhibit "A" in compliance with S.D.N.Y. Local Civil Rule 81.1(b) and 28 U.S.C. § 1446 (a). Additionally, a copy of a Stipulation Extending Time to Answer or otherwise appear is annexed hereto as Exhibit "B" (said Stipulation having not yet been filed). To the best of the knowledge of the undersigned, no further proceedings have been had in the State Court.

2. As alleged in the Complaint, Plaintiff MICHAEL L. DAYTON is a resident of Orange County, New York State. Defendant WESLEY GLEN FORT (hereinafter "FORT") is a resident of the State of Florida. Defendant ALBERT L. PROVOST (hereinafter "PROVOST") is a resident of the State of California. As such, there is complete diversity of citizenship among the parties per 28 U.S.C. §1332. A copy of plaintiff's counsel's letter of September 5, 2007 to defendants' out-of-state insurance carrier, T.H.E. Insurance Company, along with a copy of a surgical report is annexed hereto as Exhibit "C". Injuries allegedly sustained by the Plaintiff include a femur fracture which required open surgery with the placement of a rod to repair the fracture. It is alleged that the accident caused pain and resulted in permanent injuries of a serious nature. Based upon the allegations, the amount in controversy exceeds \$75,000.00.

3. The within matter is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. §1332 since there is complete diversity among the parties and the amount in controversy is in excess of the statutory threshold.

4. This Notice of Removal is being filed within 30 days from the date that service of the Summons and Complaint was made upon defendants' out-of-state insurance carrier, and as such is timely filed pursuant to 28 U.S.C. § 1446 (b).

5. Venue is appropriate in the Southern District of New York pursuant to 28 U.S.C. § 1391 (b) (1) and (2) because the Plaintiff resides in this judicial district and the events in controversy which give rise to the subject action occurred in this judicial district.

6. This matter is properly assigned to White Plains under Rule 21(a)(i) of the Rules for Division of Business Among District Judges for the Southern District of New York since the claim arose in whole or in major part in the County of Orange (a "Northern County") and at least one of the parties resides in the Northern Counties.

NAP/lmf

10127-56284


#416758

WHEREFORE, the Defendants give notice that the State Court action is removed from the Supreme Court of the State of New York, County of Orange to this Court.

Dated: Newburgh, New York
October 4, 2007

Respectfully Submitted,

By:



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